IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 08.04.2013

Coram:-

The Hon'ble Mr. Justice T.Raja

Writ Petition No.30264 of 2007
and
M.P. No.1 of 2007

T.N.Sooriya Narayanan .. Petitioner

Vs.

1. The Managing Director,
Tamil Nadu Housing Board,
Nandanam,
Chennai 600 035.

2. The Executive Engineer and Administrative Officer,
Tamil Nadu Housing Board
Coimbatore Housing Unit
Tatabad,
Coimbatore-641 012.

3. Deputy Chief Accounts Officer (Pension),
Tamil Nadu Housing Board,
Nandanam,
Chennai-35. .. Respondents

Petition under Article 226 of the Constitution of India for the issuance of a writ of certiorarified mandamus as stated therein.

For petitioner : Mr.P.Ganesan

For Respondents : Mr.R.Jayaseelan.

O R D E R

The petitioner herein seeks for issuance of a writ of certiorarified mandamus to call for the records relating to the Order in proceedings No.Pen-5/8360/2002, dated 17.07.2003, on the file of the 3rd respondent, quash the same and consequently direct the respondents to settle all the terminal benefits of 100% pension, DCRG and commutation of pension, including the amount of Rs.48,391/- recovered from the petitioner with interest @ 18% for all the arrears of payment within such period as may be stipulated by the Court.

2. Learned counsel appearing for the petitioner submits that the petitioner, who joined services of the Tamil Nadu Housing Board (TNHB) as Lower Divisional Clerk in 1964, after getting promotions at various levels viz., as Assistant in 1965, Superintendent in 1970, Assistant Revenue Officer in 1985 and Allottee Service Manager in 1991, attained the age of superannuation on 31.01.1995. By proceedings, dated 19.01.1995, passed by the first respondent, the 2nd respondent/Executive Engineer & Admin. Officer of the Coimbatore Housing Unit, TNHB, Coimbatore, was requested to relieve the petitioner on the afternoon of 31.01.1995. Consequently, the 2nd respondent, by proceedings dated 31.01.1995, while forwarding the final settlement of Provident Fund Application received from the petitioner, who was due to retire on 31.01.1995, observed that the petitioner has been relived from his duties on 31.01.1995 A.N., that there are no dues to be recovered from him and that the provident Fund final settlement may be made to the petitioner. Further, by proceedings dated 09.02.1995, the first respondent permitted the petitioner to surrender 110 days of Earned Leave for encashment on the date of retirement ie., 31.01.1995. According to the learned counsel appearing for the petitioner, having allowed the petitioner to retire by specifically observing that no due was payable by him, it is totally unfair for the Board to pass the impugned order based on some audit reports to recover a sum of Rs.48,931/- by way of 24 easy installments. According to the learned counsel, even as per Pension Rules, if the Board sustained any loss, at best, they can take action or pass recovery orders only within four years from the date of retirement. That being so, the present impugned order passed after a long period of 8 years that too without prior notice is totally contrary to the Rules and settled principles, and hence, the same deserves to be set aside.

3. Learned counsel appearing for the Housing Board, by referring to the counter affidavit, would submit that, in four Audit Paras, the total loss resulted to the Board due to the acts of the petitioner, though shown as Rs.8,71,776/-, the Board is only proceeding against him, by way of the impugned order, for a minimum sum of Rs.48,391/- having regard to Audit Para AR 14 (a)/94-95 and therefore, the petitioner hardly has anything to say against the impugned order of recovery.

4. I have carefully considered the rival submissions advanced on either side. The petitioner, who joined the services of the Board as Lower Divisional Clerk, ultimately attained the age of superannuation on 31.01.1995 in the cadre of Allottee Service Manager. Admittedly, the relevant audit proceedings pertaining to the impugned order also relates to the year 1994-95. That being so, even while the audit proceedings suggested lapses on the part of the petitioner, the petitioner was allowed to retire by way of three separate proceedings as mentioned above, and seemingly, there being specific observation in one of those proceedings by the 2nd respondent on 31.01.1995 in clear terms mentioning that,

" 1. He has been relieved from his duties on 31.1.95 Afternoon.
2. There are no dues to be recovered from him.
3. The Provident Fund final settlement may be made to Thiru T.N.Suryanarayanan, Allottee Service

Manager, Coimbatore, Housing Unit.",
as rightly pointed out by the learned counsel for the petitioner, there can never be any justification for the authorities to pass the impugned order that too eight years after allowing the petitioner to retire from service and permitting him to receive some benefits like E.L. encashment, provident fund settlement, etc. in the year 1995 which year also pertains to the audit report corresponding to the impugned order. Even otherwise, the impugned order was made to fall on the petitioner without even preceded by any notice so as to leave an opportunity for him to explain or clarify his position against the recovery proposed. Thus, the approach of the Board in issuing the impugned order after a long period of 8 years from the date of retirement of the petitioner, that too, without any fair opportunity to him by way of any prior notice, only suggests that the whole exercise was taken up totally without jurisdiction. In these circumstances, it must be observed here that the Board, as complained by the petitioner's counsel, is not justified in withholding the terminal/service benefits due to the petitioner. Hence, this Court, by taking note of the fact that the petitioner is now aged 77, deems it fit to issue suitable direction by allowing the writ petition.

5. Consequently, Writ petition is allowed by quashing the impugned order and directing the Board to process the pension papers of the petitioner and disburse all the service/terminal/pensionary benefits for which the petitioner is entitled to and such exercise, keeping in mind the old-age of the petitioner, is ordered to be completed within a period of three months from the date of receipt of a copy of this Order. No costs. Connected Miscellaneous Petition stands closed.

JI.

To

1. The Managing Director,
Tamil Nadu Housing Board,
Nandanam, Chennai 600 035.

2. The Executive Engineer and Administrative Officer,
Tamil Nadu Housing Board
Coimbatore Housing Unit
Tatabad, Coimbatore-641 012.

3. Deputy Chief Accounts Officer (Pension),
Tamil Nadu Housing Board,
Nandanam
Chennai 35